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**Hearing Date: 12<sup>th</sup> July 2004**  
**File No. 14-54/L&A/PTA/03**

**DETERMINATION IN DIGITAL SUSCRIBER LINES (DSL) CASE**

**1. INTRODUCTION**

1.1 That Pakistan Telecommunication Authority (the Authority) is a body corporate established pursuant to section 3 of the Pakistan Telecommunication (Re-organization) Act, 1996 (the Act). The Authority under section 4 of the Act performs, among others, the following functions:

- (i) regulate the establishment, operation and maintenance of telecommunication systems and the provision of telecommunication services in Pakistan;
- (ii) promote and protect the interests of users of telecommunication services in Pakistan;
- (iii) promote the availability of a wide range of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan;
- (iv) promote rapid modernization of telecommunication systems and telecommunication services; and
- (v) investigate and adjudicate on complaints and other claims made against licensees arising out of alleged contraventions of the provisions of this Act, the rules made and licenses issued thereunder and take action accordingly.

**2. BRIEF FACTS OF THE CASE**

2.1 In order to promote the high speed internet services in the country, the officer of the Authority in its letter dated 19<sup>th</sup> April 2003 directed PTCL, on behalf of the Authority, to allow all the licensed ISPs to offer broadband DSL services. The letter further stated that the ISPs shall have to sign an interconnect agreement with PTCL for the provision of DSL services and that the existing O & M contractors of PTCL shall continue as such. This decision was further deliberated upon by the Director General (Licensing) who vide its letter No. DIR(C)/PTA/149/2003 dated 8<sup>th</sup> August 2003 imposed following two conditions:

- (a) all the licensed ISPs having POPs in at least two cities and experience of running internet business for minimum of two years may be allowed to provide the DSL services; and
- (b) PTCL may charge its monthly loop charges of Rs. 670

The letter further stated that the invitation of applications should be repeated after six months inviting ISPs to enter into contract with PTCL for provision of DSL services to its customers through PTCL local loop. Conditions for the POPs and experience of ISPs in running the business may be relaxed subsequently to ensure the growth of DSL services.

2.2. That the current O & M Contractors i.e. M/s Micronet Broadband (Pvt) Ltd.; M/s Multinet (Pvt) Ltd.; and Habib Rafique International (Pvt) Ltd. (the operators) challenged the decision of the officer of the Authority dated 19 April 2003 in appeal which was fixed for hearing on 29<sup>th</sup> September 2003. The Authority after hearing all the concerned passed the determination on 11<sup>th</sup> October 2003 and decided that the order of the Director (Licensing) regarding the provision of DSL services to licensed ISPs was based on merits. Therefore, the Appeal was dismissed and the order of the officer of the Authority was maintained.

2.3. Being aggrieved by the decision of the Authority the operators jointly filed an appeal against the decision of the Authority before the Honorable Lahore High Court, Rawalpindi Bench, Rawalpindi vide Regular First Appeal, 169 of 2003 (RFA). The Honorable High Court vide its judgment dated 15<sup>th</sup> December 2003 allowed the RFA and the impugned order was set aside. Furthermore, the Honorable High Court remanded back the matter to the Authority for determination in the said DSL case after notice to appellants and all concerned, hearing them, and of course, after getting conducted afresh Market Dynamic Study/Survey (the "Study").

2.4. That the Authority, in pursuance of the orders of the honorable High Court, outsourced the Study on DSL market in Pakistan to M/s TriSektor (Pvt.) Ltd. a consultancy firm comprising experienced & inspired individuals dealing with consultancy, sales & marketing in the field of Telecom, IT & Data Networks, GIS & Remote Sensing, Electro-Medical and Electronics. The firm is currently engaged in many national and international projects such as UAAR, Pakistan Ordinance Factories, NTC, Ufone, HIT and University of Limerick, Ireland, University of Cork, Ireland, University of Dublin, Ireland, TurkCell, Turkey, Government of Dubai, Etisalat, Dubai, etc. After the completion of the study by the consultant it was made available by the Authority on its official website: [www.pta.gov.pk](http://www.pta.gov.pk) for the perusal of the stakeholders and general public.

2.5. Later on, the Authority convened a Public Hearing, to hear all the concerned and general public, on 12<sup>th</sup> July 2004 at 1000hrs at PTA, Headquarters,

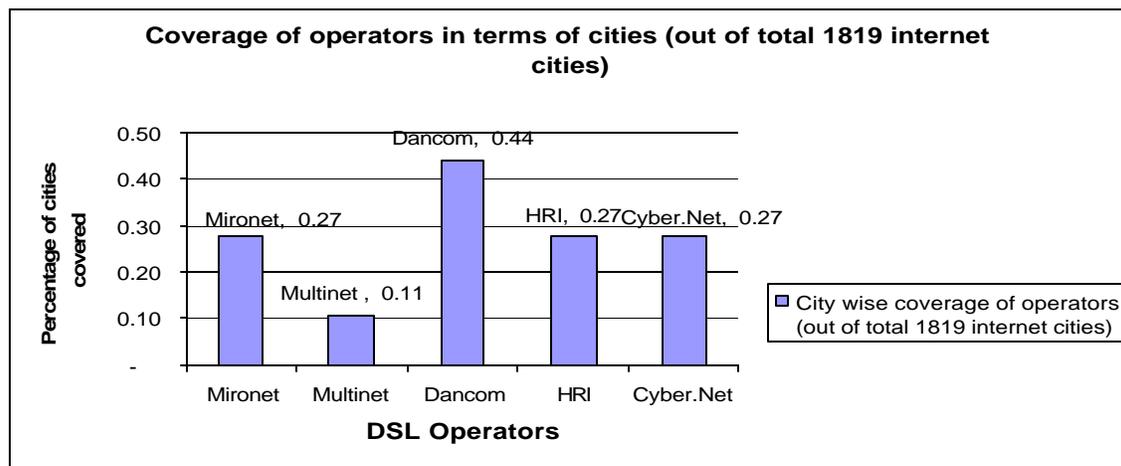
Islamabad as per the honorable High Court orders. All the stakeholders and general public attended the hearing and submitted their valuable comments and observations. The consultant Mr. Assad Akhtar made a presentation regarding the salient features of the study. The study covered the following objectives:

- a. review status of existing DSL operators in Pakistan;
- b. forecast potential demand of DSL users; and
- c. suggest policy framework/criteria for DSL services in the light of Telecom Deregulation Policy.

The study was conducted in eight (8) major cities of Pakistan which includes Karachi, Lahore, Islamabad, Rawalpindi, Faisalabad, Peshawar, Sialkot, and Quetta.

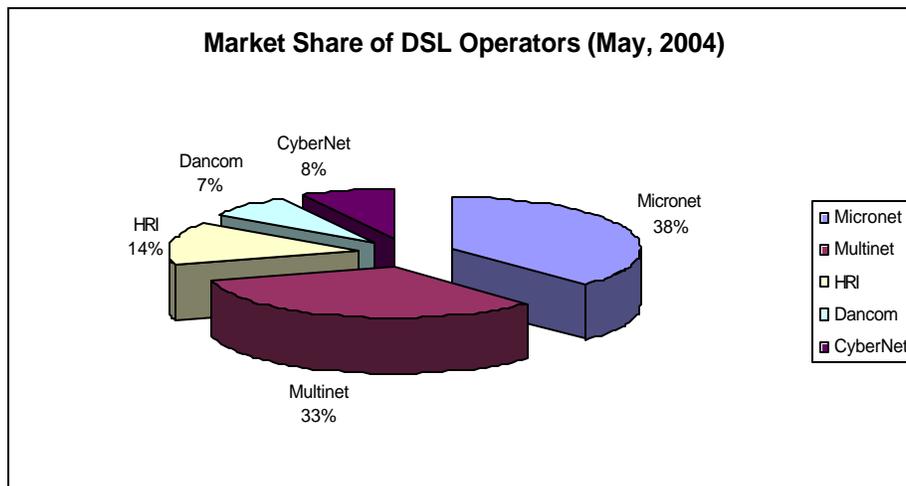
2.6. The existing position of DSL operators and users were examined and analyzed in the study. The DSL services were started in July 2002 in the country. There are two types of DSL operators: (a) who are providing DSL services through O & M agreements with PTCL; and (b) who have signed interconnect agreement with PTCL. Currently there are 2.573 million internet subscribers out of whom only 2852 subscribers are using DSL services in the country. The current number of DSL operator in total is five.

The existing coverage of DSL operators in the country is as follows:



Cities	Micronet	Dancom	HRI	Multinet	CyberNet
<b>Total Exchanges</b>	32	27	22	37	33
<b>Cities covered</b>	5	8	5	2	5

The market share of the each DSL operator in Pakistan, as per study, is as under:



Month	Number of Customers					Total
	Micronet	Multinet	HRI	Dancom	CyberNet	
May 2004	1069	950	400	200	233	2,852

2.7. The study highlighted the factors which are hampering DSL market in Pakistan. The consultant pointed out that the following are the major impediments in the development of the DSL market in Pakistan: These are namely:

- The coverage of the existing five DSL operators is too low (only 9 out of total prospective 1819 cities are being covered at the moment).
- Very limited choice is available for both existing and prospective DSL users to select their operator.
- In the light of the current scenario with only a few operators in the DSL market, likeliness of creation of a cartel phenomenon can not be over-ruled.
- Lack of competition in DSL market has resulted in high prices and services with low or no considerations towards quality of service.
- In most cases DSL operators are providing the services with a redundancy-less connectivity – locally and internationally, which adds to the non-availability of services to the end user.
- Most of the operators have acquired insufficient bandwidth and international connectivity despite the fact that the cost for the same has been reduced considerably over the past few years.
- Prices of DSL customer premises equipment (CPE) have slashed down but the positive effect has not been transferred to the end user and various other factitious charges based on misinformation are being unnecessarily levied under the head of initial set-up (such as installation, commissioning and configuration) - another outcome of lack of competition in the market.

2.8. After analyzing the data received through survey the consultant came to the following key findings:

- Overall, 56% of the internet users including 63% of the dialup subscribers and 39% of the DSL users are not satisfied with the quality of service they are getting at this moment.
- 77% of the dial up internet users and 62% of the DSL users are not satisfied with the present value of the money they are paying for internet/DSL services.
- 79% of the internet users believe that quality and cost of services will improve with more DSL service providers in the market.
- 83% of the current internet users are desirous of using higher speed internet i.e., DSL services.
- 75% of internet users are of the opinion that new operators should be introduced so that the quality of the services improves and the cost is reduced like it has happened in the case of ISPs.
- 64% of the people vote for non-discrimination of DSL price for rural and urban areas.
- More and more corporate are willing to have higher, better and reliable internet connections as more and more businesses are basing on internet technology for their day to day needs.
- There is a big demand of DSL in the larger cities, it is possible to have a large increase of DSL users all over Pakistan in the near future.

2.9. The consultant recommended that there should be no restriction on the number of DSL operators; initial subscription/setup cost should be reduced; easy payment plans for the CPE should be promoted; fostering local cooperation between ISPs & local loop service provider; DSL operators should be encouraged to move towards rural areas by giving incentive through USF; Service Level Agreement (SLA) should be mandatory; incumbent operator should be encouraged to improve its co-location & interconnect services; and rollout obligation should be mandatory for DSL operators. He further recommended to the Authority that there should not be minimum requirement of number of POPs and the condition of two years experience should also be relaxed.

2.10. M/s Micronet Broad Band (Pvt.) Ltd. objected and challenged the credibility of the study. They also submitted written comments on the study. M/s Micronet Broadband was of the view there were basic flaws in the study which are:

- i. Simple random sampling method was used which is most complex method of statistical sampling.

- ii. The consultant did not have basic idea on conducting market research survey.
- iii. The study is based on people desires. It has not taken into account the business case at all. So it is, infact, a Market Static Study.
- iv. The study provides misleading interpretation about tapped or untapped market.
- v. The figures, as provided by the consultant, are not correct.
- vi. There is lack of seriousness in the survey.
- vii. The figures are self contradictory.
- viii. The QoS will not be improved even with the introduction of new operators. User satisfaction level for value of money even after introduction of new operators cannot be guaranteed.

The operator further recommended that PTA should reject the study. The study should be sent to Federal Bureau of Statistics or other expert body for expert comments. Section 6 (e) of the Act says that it is PTA's responsibility to promote fair competition in telecom sector.

2.11. The other operators did not specifically raised objections against the credibility of the study. They agreed that DSL market should be open, however, insisted on the fair competition among the operators for the provision of DSL services. One of the operator stated that PTCL does not have appropriate space in their exchanges to accommodate new DSL operators.

2.12 The general public also participated in the hearing. Most of the users of DSL services were not satisfied with the Quality of Service, availability of service as well as the cost of the services being offered by the current operators. Mr. Khawaja Advocate, Mr. Salman Farooq and Mr. Rahseed Ramay, Chief Executive Officer of M/s Ace Quality (Pvt.), insisted and pointed that by using this technology the regular telephone line can be converted into a high speed broadband digital link. Therefore, the provision of DSL services should be allowed to all ISPs. It was also pointed out that even in cities where DSL operators are providing services that are not fully covered. They are not in a position to provide services in all areas of the city. They further contended that even in the areas where they are providing services, the QoS is so poor that it cannot be a good value for the money spent by the subscriber. Many of the people also raised serious concerns and showed their dissatisfaction on the customer support services provided by the existing DSL operators. Some time, the operators take days to restore the services. The representative of PTCL, when asked to reply the comment given by one of the operator regarding the lack of necessary space in the exchanges, stated that there is no paucity of space in their exchanges to accommodate the new DSL operators. As PTCL, being the commercial organization, has already made necessary arrangements to accommodate the Local Loop licensees.

2.13. Apart from the said participants, the learned Barrister Khaliq-u-Zaman, draw the attention of the Authority towards Para No. 4(4) of the judgment on writ petition No.1478-2004 dated 28<sup>th</sup> May 2004 wherein the Honorable Mr. Justice Nasim Sikandar has observed that the enforcement clause 34.2 produced in RFA169 of 03 does not in any manner vest any right in the petitioner to oust its competitors or to force the PTA not to engage any other provider of similar service. He quoted the relevant portion of the judgment which states:

“In the ultimate analysis the petitioner seeks the enforcement of clause 34.2 against the two respondents. That clause as reproduced in RFA No. 169 of 03 in my way of reading of an agreement does not in any manner vest any right in the petitioner to oust its competitor or to force Respondent No. 1 not to engage any other provider of similar service. To me it appears amazing that the very clause denying the petitioner an exclusivity is being relied upon to achieve that goal by indirect means including a patent mis-interpretation of the order recorded by the court in RFA No. 169/2003.”

The learned counsel further asserted that the present operators intend to maintain their oligopoly of DSL market in Pakistan at the cost of the customers. By introducing more competition in DSL market their business will, of course, suffer but the general public will get the benefit of competition. PTA should take serious note of the monopolistic tendency and anti-competitive behavior of the current operators and should safeguard the interests of the users of telecommunication services by introducing competition in the DSL market.

### **3. ORDER**

3.1. Based on the above mentioned facts, the survey report, its key findings & recommendations, the comments of the stakeholders & other participants of the hearing, and the statutory obligations under the Act, the Authority comes to the following findings/conclusions:

- i. the survey was conducted with due deliberations and consultations. There could be many ways to conduct surveys, however, the method adopted by the consultant was based on rationale and adequate & proper transparency was maintained during the whole survey;
- ii. there were no flaws in the survey;
- iii. that there is huge demand for DSL services in Pakistan which can only be met by introducing new operators in the market;
- iv. that the provision of high quality, efficient, cost effective and competitive telecommunication services throughout Pakistan is the prime responsibility of the Authority; and
- v. that the telecom de-regulation policy has already been announced by the Federal Government which imposes no restriction on the number

of operators for provision of fixed line telecom services in Pakistan. Following the same approach, there should not be any restriction on the number of value added service providers/operators in Pakistan.

3.2. In the light of above referred circumstances the Authority hereby determines that the DSL Market is open to all licensed ISPs. The ISPs, who have valid license, may approach and enter into interconnection agreement with PTCL and Local Loop licensees.

**Member (Technical)**

**Member (Finance)**

**Chairman**

The Authority signs this determination on\_\_\_\_\_ August 2004.